

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

AMENDMENTS TO 312 IAC 25) Administrative Cause
PERTAINING TO COAL MINING) Number 09-177R
AND RECLAMATION) (LSA Document # 10-547(F))

**REPORT ON RULE PROCESSING, CONSIDERATION OF PUBLIC
COMMENTS, ANALYSIS AND RECOMMENDATION
REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration are proposed amendments to Reclamation rules within 312 IAC 25. The proposal will add definitions of “applicant/violator system”, “control or controller”, “federal office of surface mining applicant violator system office”, and “knowing or knowingly” at 312 IAC 25-1-10.5, 312 IAC 25-1-32.5, 312 IAC 25-1-51.5 and 312 IAC 25-1-75.1, respectively. Under the proposal, the definition of “excess spoil” will be amended at 312 IAC 25-1-48. The proposal includes amendments to 312 IAC 25-4-18 and 312 IAC 25-4-59 to require compliance history reports from the applicant/violator system for both surface and underground mining. This rule proposal will add 312 IAC 25-4-115.1 to require notice of changes of ownership and control to be filed timely by the permittee. It also provides provisions for challenging an ownership/control determination through the addition of 312 IAC 25-4-122.1 and outlines evidence necessary for submission by the permittee during ownership/control challenges through added rule section 312 IAC 25-4-122.2. The proposal also adds 312 IAC 25-4-122.3 that outlines the duties of the Department in addressing an ownership/control challenge. A proposed amendment to 312 IAC 25-4-127 will clarify various requirements for permit revisions and the amendment of 312 IAC 25-5-7 will provide clarity concerning alternative post-mine land uses beyond the control of the permittee. Requirements for informal conferences and public hearings associated with bond release applications are clarified through amendments to 312 IAC 25-5-16. Alternative stocking rates for specific forest reclamation approaches is provided for at 312 IAC 25-6-59. Clarification as to applicability of blasting regulations for the construction of slopes and shafts and underground coal mines is offered through amendments to 312 IAC 25-6-93. Requirements for pre-blast surveys as well as publication and approval of blasting schedules at underground mines will now mirror the requirements associated with surface mines through amendment to 312 IAC 25-6-94 and 312 IAC 25-6-95, respectively. Stays of cessation orders and rights to appeal such orders are addressed through

amendments to 312 IAC 25-7-5. Because federal counterparts have been repealed, 312 IAC 25-4-23 and 312 IAC 25-4-64 are proposed for repeal.

The Natural Resources Commission (*NRC*) granted preliminary adoption to the proposed rule amendments on May 19, 2010.

The “Notice of Intent” to adopt the proposed rule amendment was posted to the INDIANA REGISTER database website as 20100818-IR-312100547NIA on August 18, 2010. The notice identified Brock A. Mayes, Department of Natural Resources, Division of Reclamation, as the “small business regulatory coordinator” for purposes of Indiana Code § 4-22-2-28.1.

As specified by Executive Order, proposed fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on August 25, 2010. In a letter dated September 24, 2010, Adam M. Horst, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

The NRC Division of Hearings submitted the rule proposal to the Legislative Services Agency (*LSA*) along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”) on November 8, 2010. The Notice of Public Hearing was submitted to LSA on November 9, 2010. The Notice of Public Hearing, along with the Economic Impact Statement and the text of the proposed rule was posted to the INDIANA REGISTER database website on November 24, 2010 as 20101124-IR-312100547PHA. Following receipt of an “Authorization to Proceed” from LSA on November 9, 2010, the NRC Division of Hearings also caused a Notice of Public Hearing to be published by the Indianapolis Newspapers, a newspaper of general circulation in Marion County Indiana, on December 2, 2010. In addition, the notice of the public hearing and a summary of the proposed rule changes were published on the Commission’s web-based electronic calendar.

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

The public hearing was scheduled for January 13, 2011 at 1:00 p.m. at the Department of Natural Resources, Division of Reclamation Field Office, 14619 West State Road 48, Jasonville, Indiana. Sandra L. Jensen was present to conduct the public hearing. Bruce Stevens, Division of Reclamation Director, along with Division of Reclamation Assistant Director, Brock Mayes and Reclamation Plan Specialist, Colleen Baughman, were also present.

No member of the public participated in the public hearing.

b) Comments Received Outside Public Hearing

The opportunity to submit written public comments continued from approximately August 18, 2010 until January 13, 2011. No written comments were received.

3. ANALYSIS AND RECOMMENDATION

The Department of Natural Resources Division of Reclamation (*Division of Reclamation*) received correspondence from the United States Department of the Interior's Office of Surface Mining (*OSM*) on October 5, 2009 that triggered the present rulemaking. OSM's correspondence explained that changes had been made to the federal "Ownership and Control and related rules" and advised of "Major Program Changes as a Result of the October 28, 1994; December 19, 2000; and December 3, 2007 Federal Regulations at 30 CFR Parts 701, 773, 774, 778, 840, 843 and 84." The correspondence further requested that the Department "submit either a proposed written amendment or a description of an amendment to be proposed in response to the revised Federal regulations, and a timetable for enactment."

Consequently, a large portion of the amendments are required program amendments mandated by OSM. The Division of Reclamation expressed in its Justification Statement that:

The Department of Interior's Office of Surface Mining is the federal oversight authority for coal mining in the nation and is the oversight agency of the Division of Reclamation. 30 CFR, Part 732 provides the Office of Surface mining must notify States with a primacy program of any changes to the regulation associated with the Surface Mining Control and Reclamation Act. The state must then modify its regulatory program to remain consistent with all federal requirements.

The proposed addition of rules and amendment of existing rules are necessary to maintain a primacy program relating coal mining and reclamation.

At the time the text of the proposed rule was posted to the INDIANA REGISTER database website on November 24, 2010, LSA noted five citations that did not comply with the established standards for rule drafting. Consequently, it is recommended that the following revisions be made to effect stylistic matters without altering substance:

1. At 312 IAC 25-4-18(d) the words “part (b) of this subsection” should be deleted and replaced with the words “subsection (b)”.
2. At 312 IAC 25-4-59(d) the words “part (b) of this subsection” should be deleted and replaced with the words “subsection (b)”.
3. In the last sentence of 312 IAC 25-4-122.1 the words “the Act or its implementing regulations” should be deleted and replaced with the words “IC 14-34 and this Article”.
4. In the last sentence of 312 IAC 25-4-122.2(b) the word “paragraph” should be deleted and replaced with the word “section”.
5. In the second sentence of 312 IAC 25-6-93(a) the words “These rules” should be deleted and replaced with the words “This section and sections 94 through 97”.

The recommended revisions have been incorporated into the rule language set forth at Exhibit A.

It is the recommendation of the hearing officer that the proposed rule additions and amendments, as revised and set forth in Exhibit A be granted final adoption.

Dated: February 8, 2011

Sandra L. Jensen
Hearing Officer

“Exhibit A”

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #10-547(F)

DIGEST

Adds 312 IAC 25-1-10.5 to define "applicant/violator system". Adds 312 IAC 25-1-32.5 to define "control or controller". Amends 312 IAC 25-1-48 defining "excess spoil". Adds 312 IAC 25-1-51.5 to define "federal Office of Surface Mining Applicant/Violator System Office". Adds 312 IAC 25-1-75.1 to define "knowing or knowingly". Amends 312 IAC 25-4-18 and 312 IAC 25-4-59 to require compliance history reports from the applicant/violator system for both surface and underground mining. Adds 312 IAC 25-4-115.1 to require timeliness of notice of changes of ownership and control by the permittee. Adds 312 IAC 25-4-122.1 to provide provisions for challenging an ownership/control determination. Adds 312 IAC 25-4-122.2 to outline evidence necessary for submission by the permittee during ownership/control challenges. Adds 312 IAC 25-4-122.3 to outline duties of the Department as a result of an ownership/control challenge. Amends 312 IAC 25-4-127 to clarify various requirements for permit revisions. Amends 312 IAC 25-5-7 to provide clarity concerning alternative postmine land uses beyond the control of the permittee. Amends 312 IAC 25-5-16 to clarify requirements for informal conferences and public hearings associated with bond release. Amends 312 IAC 25-6-59 to provide for alternative stocking rates for specific forest reclamation approaches. Amends 312 IAC 25-6-93 to clarify applicability of blasting regulations for construction of slopes and shafts at underground coal mines. Amends 312 IAC 25-6-94 for the purpose of mirroring requirements for preblast surveys at underground mines with that of the surface mine preblast survey provisions at 312 IAC 25-6-30. Amends 312 IAC 25-6-95 concerning publication and approval of blasting schedules and to mirror the requirements of the surface mine blasting provisions at 312 IAC 25-6-31. Amends 312 IAC 25-7-5 in regard to stays of a cessation order and to provide information concerning rights to appeal of determinations made under this regulation. Repeals 312 IAC 25-4-23 and 312 IAC 25-4-64 due to the federal counterpart regulations having been repealed. Effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.

SECTION 1. 312 IAC 25-1-10.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-10.5 "Applicant/violator system" defined

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 10.5. "Applicant/violator system" means an automated information system of:

- (1) applicant;**
- (2) permittee;**
- (3) operator;**
- (4) violation; and**
- (5) related;**

data maintained by the federal Office of Surface Mining to assist in implementing this article.

(Natural Resources Commission; 312 IAC 25-1-10.5)

SECTION 2. 312 IAC 25-1-32.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-32.5 "Control or controller" defined

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 32.5. "Control or controller", for purposes of 312 IAC 25-4-17, 312 IAC 25-4-18, 312 IAC 25-4-58, 312 IAC 25-4-59, 312 IAC 25-4-114, 312 IAC 25-4-115.1, 312 IAC 25-4-122.1 through 312 IAC 25-4-122.3, 312 IAC 25-4-133, and 312 IAC 25-7-5, means the following:

- (1) A permittee of a surface coal mining operation.**
- (2) An operator of a surface coal mining operation.**
- (3) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.**

(Natural Resources Commission; 312 IAC 25-1-32.5)

SECTION 3. 312 IAC 25-1-48 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-1-48 "Excess spoil" defined

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 48. "Excess spoil" means spoil ~~in excess of that necessary to backfill and grade affected areas to~~ material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour. ~~The term may include box cut spoil where it has been demonstrated, for the duration of the mining operation, that the box cut spoil is not needed to restore the approximate original contour.~~ or to blend the mined-out area with the surrounding terrain in accordance with 312 IAC 25-6-34, 312 IAC 25-6-50, 312 IAC 25-6-98, and 312 IAC 25-6-112 in nonsteep slope areas shall not be considered excess spoil.

(Natural Resources Commission; 312 IAC 25-1-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 4. 312 IAC 25-1-51.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-51.5 "Federal Office of Surface Mining Applicant/Violator System Office" defined

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 51.5. "Federal Office of Surface Mining Applicant/Violator System Office" means the U.S. Department of Interior, Office of Surface Mining office that maintains the applicant/violator system.

(Natural Resources Commission; 312 IAC 25-1-51.5)

SECTION 5. 312 IAC 25-1-75.1 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-75.1 "Knowing or knowingly" defined

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 75.1. "Knowing or knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

(Natural Resources Commission; 312 IAC 25-1-75.1)

SECTION 6. 312 IAC 25-4-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-18 Surface mining permit applications; compliance information

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 778.14

Sec. 18. (a) Each application shall contain the following information:

(1) A statement of whether the applicant, **operator**, or any subsidiary, affiliate, or persons controlled by or under common control with the applicant **or the operator** has:

(A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or

(B) forfeited a performance bond or similar security deposited in lieu of bond.

(2) A brief explanation of the facts involved in any ~~such~~ suspension, revocation, or forfeiture referred to in subdivision (1), including the following:

(A) The:

(i) identification number and date of issuance of the permit; and ~~the~~

(ii) date and amount of bond or similar security.

(B) The:

(i) identification of the authority that suspended or revoked the permit or forfeited the bond; and ~~the~~

(ii) stated reasons for the action.

- (C) The current status of the permit, bond, or similar security involved.
- (D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.
- (E) The current status of the proceedings required in clause (D).
- (3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns ~~and~~ or controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that ~~such~~ **the** notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:
 - (A) Any identifying numbers for the operation, including the following:
 - (i) The federal or state permit number and MSHA number.
 - (ii) The dates of issuance of the violation notice and MSHA number.
 - (iii) The name of the person to whom the violation notice was issued.
 - (iv) The name of the issuing regulatory authority, department, or agency.
 - (B) A brief description of the violation alleged in the notice.
 - (C) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subdivision to obtain administrative or judicial review of the violation.
 - (D) The current status of the proceedings and of the violation notice.
 - (E) The actions, if any, taken by any person identified in this subdivision to abate the violation.

(b) After an applicant is notified that the application is approved, ~~but before the director will not issue the permit is issued, until~~ the applicant, ~~shall~~, as applicable, ~~update, correct, updates, corrects, or indicate~~ **indicates** that no change has occurred in the information previously submitted under this section. **After completion of this requirement, the director will again request a compliance history report from the applicant/violator system to determine if there are any unabated or uncorrected violations that affect permit eligibility under this rule. The director will request this report not more than five (5) business days before permit issuance.**

(c) **The director will rely upon the violation information supplied by the applicant, a report from the applicant/violator system, any other available information to review histories of compliance with this article, the federal Surface Mining Control and Reclamation Act of 1977, or Public Law 95-87, and any other applicable air or water quality laws for entities identified under subsection (a)(1).**

(d) **The director must conduct the review required under section 114(b) of this rule before making a permit eligibility determination under subsection (b).**

(Natural Resources Commission; 312 IAC 25-4-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3444, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 7. 312 IAC 25-4-59 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-59 Underground mining permit applications; compliance information

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 778.14

Sec. 59. (a) Each application shall contain the following information:

(1) A statement of whether the applicant, **operator**, any subsidiary, affiliate, or persons controlled by or under common control with the applicant **or the operator** has:

(A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or

(B) forfeited a performance bond or similar security deposited in lieu of a bond.

(2) A brief explanation of the facts involved, if any such suspension, revocation, or forfeiture referred to in subdivision (1) has occurred, including the following:

(A) The:

(i) identification number and date of issuance of the permit; and ~~the~~

(ii) date and amount of bond or similar security.

(B) Identification of the authority that suspended or revoked the permit or forfeited the bond, and the stated reasons for the action.

(C) The current status of the permit, bond, or similar security involved.

(D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

(E) The current status of the proceedings identified in clause (D).

(3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns ~~and~~ or controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that ~~such~~ **the** notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:

(A) Any identifying numbers for the operation, including **the following**:

(i) The federal or state permit number and MSHA number.

(ii) The dates of issuance of the violation notice and MSHA number.

(iii) The name of the person to whom the violation notice was issued. ~~and~~

(iv) The name of the issuing regulatory authority, department, or agency.

(B) A brief description of the violation alleged in the notice.

(C) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any

person identified in this subdivision to obtain administrative or judicial review of the violation.

(D) The current status of the proceedings and of the violation notice.

(E) The actions, if any, taken by any person identified in this subdivision to abate the violation.

(b) After the applicant is notified that his or her application is approved, ~~but before the director will not issue the permit is issued, until~~ the applicant, ~~shall~~ as applicable, ~~update, correct, updates, corrects, or indicate~~ **indicates** that no change has occurred in the information previously submitted under this section. **After completion of this requirement, the director will again request a compliance history report from the applicant/violator system to determine if there are any unabated or uncorrected violations that affect permit eligibility under sections 114 and 115 of this rule. The director will request this report not more than five (5) business days before permit issuance.**

(c) **The director will rely upon the violation information supplied by the applicant, a report from the applicant/violator system, any other available information to review histories of compliance with this article, the federal Surface Mining Control and Reclamation Act of 1977, or Public Law 95-87, and any other applicable air or water quality laws for entities identified under subsection (a)(1).**

(d) **The director must conduct the review required under section 114 of this rule before making a permit eligibility determination under subsection (b).**

(Natural Resources Commission; 312 IAC 25-4-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3461, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 8. 312 IAC 25-4-115.1 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-4-115.1 Post permit issuance information requirements

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 115.1. Within sixty (60) days of any addition, departure, or change in position of any person identified in sections 17 and 58 of this rule, the permittee must provide the following:

(1) The information required under sections 17(b)(1) through 17(b)(3) and 58(a)(3)(A) through 58(a)(3)(C).

(2) The date of any departure.

(Natural Resources Commission; 312 IAC 25-4-115.1)

SECTION 9. 312 IAC 25-4-122.1 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-4-122.1 Review of director's ownership or control listing or finding

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 122.1. (a) Whenever an ownership or control listing or finding is made by the department under section 114 of this rule, the applicant or a person with an interest that is or may be adversely affected may challenge the listing or finding by submission of a written explanation of the basis for the challenge, along with any evidence or explanatory materials, to the director.

(b) The provisions of this section apply only to challenges to ownership or control listings or findings. The applicant or a person with an interest that is or may be adversely affected may not use these provisions to challenge liability or responsibility under any other provision of IC 14-34 and this Article.

(c) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the department must consult the regulatory authority with jurisdiction over the violation and the federal Office of Surface Mining Applicant Violator/System Office to obtain additional information.

(d) The department may request an investigation by the federal Office of Surface Mining Applicant/Violator System Office.

(e) At any time, a person listed in the applicant/violator system as an owner or controller of a surface coal mining operation may request an informal explanation from the federal Office of Surface Mining Applicant/Violator System Office as to the ownership or control capacities shown in the applicant/violator system. Under 30 CFR 773.26, the federal Office of Surface Mining Applicant/Violator System Office will provide a response within fourteen (14) days of the request describing the ownership or control capacities listed in the applicant/violator system.

(Natural Resources Commission; 312 IAC 25-4-122.1)

SECTION 10. 312 IAC 25-4-122.2 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-4-122.2 Burden of proof for ownership or control challenges

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 122.2. (a) Upon challenge of a listing of ownership or control or a finding of ownership or control made under section 114 of this rule, the applicant or a person with an interest that is or may be adversely affected must prove by a preponderance of the evidence that the challenger either:

(1) does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(2) did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.

(b) In meeting the burden of proof, a challenger must present reliable, credible, and substantial evidence and any explanatory materials to the director. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If requested, the director will hold as confidential any information submitted under this section that is not required to be made available to the public under sections 15 and 113 of this rule.

(c) Materials that may be submitted in response to the requirements of subsection (b) include, but are not limited to, the following:

(1) Notarized affidavits containing specific facts concerning the duties performed for the relevant operation, the beginning and ending dates of ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation.

(2) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.

(3) Certified copies of documents filed with or issued by any state, municipality, or federal governmental agency.

(4) An opinion of counsel, when supported by the following:

(A) Evidentiary materials.

(B) A statement by counsel that he or she is qualified to render the opinion.

(C) A statement that counsel has personally and diligently investigated the facts of the matter.

(Natural Resources Commission; 312 IAC 25-4-122.2)

SECTION 11. 312 IAC 25-4-122.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-4-122.3 Written agency decision on challenges to ownership or control

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34

Sec. 122.3. (a) Within sixty (60) days of receipt of a challenge under section 122.1 of this rule, the director will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision will state the determination whether the party in question owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

(b) The director will promptly provide the challenger with a copy of decision by either:

(1) certified mail, return receipt requested; or

(2) any means consistent with the rules governing service of a summons and complaint.

(c) Service of the decision is complete upon delivery and is not incomplete if refusal to accept delivery occurs.

(d) All decisions made under this section will be posted on the applicant/violator system.

(e) Any person who receives a written decision under this section shall be entitled administrative review under IC 4-21.5.

(f) Following the director's written decision, or any decision by a reviewing administrative or judicial tribunal, information in the applicant/violator system will be reviewed to determine if it is consistent with the decision. If it is not, the director will promptly revise the information in the applicant/violator system to reflect the decision.

(Natural Resources Commission; 312 IAC 25-4-122.3)

SECTION 12. 312 IAC 25-4-127 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-127 Permit reviews; revisions, renewals, and transfer, sale, or assignment of rights granted under permits; permit revisions

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-5; IC 14-21-1; IC 14-25-4; IC 14-34-4-7; IC 14-34-4-13

Sec. 127. (a) A revision to a permit shall be obtained according to the following:
 (1) For changes in surface coal mining or reclamation operations described in the original application and approved under the original permit, when ~~such~~ **the** changes constitute a ~~significant~~ departure from the method of ~~conduct of~~ **conducting** mining or reclamation operations ~~contemplated by~~ **described in the original approved** permit. Changes that constitute a significant departure shall include, but are not limited to, those that could result in the operator's inability to comply with 312 IAC 25-6-1 through 312 IAC 25-6-148 or present a hazard to public health and safety.

(2) When required by an order issued under section 126 of this rule.

(3) In order to continue operation after the cancellation or material reduction of the liability insurance policy, or performance bond upon which the original permit was issued.

~~(b) The application for revision shall be filed in accordance with the following:~~

~~(1) The permittee shall submit the application to the director within the time provided for under section 5(c) of this rule.~~

~~(2) Any application for a revision that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under sections 16 through 107 of this rule or in the conditions of the original~~

(4) Permit revisions shall, at a minimum, be subject to the requirements of sections 108 through 123 of this rule.

~~(c)~~ **(5)** Any extensions to the area covered by a permit, except for incidental boundary revisions under subsection ~~(d)~~, **(g)**, shall be made by application for a new permit and shall not be approved under section 126 of this rule, this section, and sections 128 through 134 of this rule.

(b) A permit revision is one (1) of the following:

(1) A significant revision described in subsection (d) that is subject to the permit application information requirements and procedures of this rule including:

(A) notice;

(B) public participation; and

(C) notice of decision requirements;

under IC 4-21.5-3-5 and IC 14-34-4-13 before approval and implementation. The permittee shall submit the application for revision to the director within the time provided for under section 5(c) of this rule.

(2) A nonsignificant revision described in subsection (e) that:

(A) must be reviewed by the director or the director's designated representative before implementation;

(B) is approved in writing; and

(C) is not required to comply with the public notice and hearing requirements of this rule for issuance of a permit or significant revision.

(3) A minor field revision described in subsection (f) that:

(A) a field inspector may approve in an inspection report or on a form signed in the field;

(B) does not require technical review or design analysis;

(C) is capable of being evaluated in the field by the director's designated delegate for compliance with the requirements of this subsection;

(D) must be properly documented by the permittee consistent with the requirements of this article concerning the proposed activities and that documentation submitted to the director not more than thirty (30) days following the date of field approval; and

(E) is not required to comply with the public notice and hearing requirements of this rule for issuance of a permit or significant revision.

A determination by the director under subdivisions (2) and (3) is subject to administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding. The request must be in writing and received by the commission within fifteen (15) days of receipt of the determination by the director.

(c) An application for a permit revision may not be approved unless the permittee demonstrates and the director or the director's designated representative finds that:

(1) reclamation as required by this article can be accomplished;

(2) the applicable requirements of IC 14-34-4-7 that are pertinent to the permit revision are met;

(3) the permit revision complies with all applicable requirements of this rule; and

(4) no other conditions for approval of the application need to be imposed.

(d) A proposed permit revision is a significant revision if any of the following conditions exist:

(1) The change may result in an adverse impact beyond that previously considered, affecting cultural resources that are listed on or eligible to be listed on the:

(A) National Register of Historic Places; or

(B) Indiana state register of historic sites and historic structures established under IC 14-21-1.

(2) Blasting will be used in a manner that is likely to cause adverse impacts beyond that previously considered to persons or property outside the permit area.

(3) The change may result in an adverse impact beyond that previously considered, affecting a water supply to which IC 14-25-4 applies.

(4) The change:

(A) requires the identification, disturbance, or handling of toxic forming or acid forming materials in a manner different from that previously considered; and

(B) has the potential for causing an additional impact not previously considered.

(5) The change may result in an adverse impact on fish, wildlife, and related environmental values beyond that previously considered.

(6) The addition of any following facility where the addition will cause an impact not previously considered a:

(A) coal processing facility, except that the addition of a temporary coal processing facility used exclusively for crushing and screening need not be considered a significant revision; or

(B) permanent support facility.

(7) The change will cause a:

(A) new or an updated probable hydrologic consequences determination; or

(B) cumulative hydrologic impact analysis to be required under section 115(a)(5) of this rule.

(8) A postmining land use will be changed to any of the following:

(A) A residential land use.

(B) A commercial or industrial land use.

(C) A recreational land use.

(D) Developed water resources, as defined at 312 IAC 25-1-39, that meet the size criteria of 30 CFR 77.216(a).

(e) A proposed permit revision is a nonsignificant revision if any of the following conditions exist:

(1) For a surface mine within the permit area, a change of the:

(A) direction of mining; or

(B) location of mining equipment.

(2) The substitution of mining equipment designed for the same purpose, the use of which is not detrimental to the achievement of final reclamation or subsidence control.

(3) For an underground mine, any change in the direction or location of mining within the permit area or shadow area in response to unanticipated events.

(4) Any other change in the mining or reclamation plan that the director reasonably determines:

(A) will not have a significant effect on:

(i) the achievement of final reclamation plans under this rule;

(ii) subsidence control plans; and

(iii) the surrounding area;

(B) does not involve significant delay in achieving final reclamation or significant change in the land use; or
(C) is temporary and necessitated by:
(i) unanticipated and unusually adverse weather conditions;
(ii) other acts of God;
(iii) strikes; or
(iv) other causes beyond the reasonable control of the permittee;
if all steps specified by the director to maximize environmental protection are taken.

(f) A minor field revision may include the following:
(1) Soil stockpile location and configurations.
(2) As-built pond certifications.
(3) Minor transportation facilities changes.
(4) Any of the following changes for a pond:
(A) Depth.
(B) Shape.
(C) Orientation.
(5) An area for temporary:
(A) drainage control; or
(B) water storage.
(6) Equipment changes.
(7) Explosive storage areas.
(8) Minor mine management or support facility locations, except for the disposal or storage of refuse.
(9) Adding United States Natural Resources Conservation Service conservation practices.
(10) Methods of erosion protection on diversions.
(11) Minor diversion location changes.

~~(d)~~ (g) Incidental boundary revision criteria consist of the following:
(1) Incidental boundary revisions are those that:
(A) do not constitute a significant ~~departure from~~ **revision of** the method of ~~conduct of~~ **conducting** mining or reclamation operations contemplated by the original permit as ~~defined described~~ in subsection ~~(a)(1); (d);~~
(B) are required for the orderly and continuous mining and reclamation operation;
(C) adjoin the permit **or shadow area** acreage;
(D) would be mined and reclaimed in conformity with the approved permit plans; and
(E) do not exceed ten percent (10%) of the original permit acres or twenty (20) acres, whichever is less.
(2) The aggregate of all incidental boundary revisions for the permit shall not exceed fifteen percent (15%) of the original permit area, provided, however, the aggregate of all incidental boundary revisions that involve coal removal shall not exceed ten percent (10%) of the original permit area. The director may waive the fifteen percent (15%) aggregate limitation if the director finds:
(A) all other provisions of subdivision (1) are met; and
(B) the interests of the public will not be adversely affected.

(3) A permittee may obtain an incidental boundary revision by submitting to the director an application that shall contain the following information:

- (A) The size of the original permit area, and of the additional area.
- (B) The premining and postmining land uses.
- (C) A showing that the other requirements of subdivisions (1) and (2) are satisfied.
- (D) A map showing the ~~additional~~ area **to be added by the revision**.
- (E) Proof of the permittee's legal right to enter and conduct surface coal mining and reclamation operations on the additional area.
- (F) Any necessary plans that are not contained in the already approved permit.
- (G) A statement indicating whether or not any areas unsuitable for mining as provided in 312 IAC 25-3-1 and 312 IAC 25-3-3 are contained within the proposed additional acreage.

(4) No application for an incidental boundary revision shall be approved unless the applicant demonstrates and the director finds the following:

- (A) That reclamation as required by IC 14-34 and this article can be accomplished.
 - (B) The application complies with all requirements of IC 14-34 and this article.
 - (C) The pertinent findings required under section 115 of this rule are made.
- (5) The director shall approve or deny the incidental boundary revision within thirty (30) days of submittal. The director may extend this thirty (30) day time limitation, where the director finds thirty (30) days is insufficient to adequately review the application and make the findings specified in subdivision (4).

(6) Nothing in this subsection shall be construed to alter the general requirements of IC 14-34 and this article for submittal of fees and bond.

(7) The director may require an applicant for an incidental boundary revision to protect, within the expanded boundaries, any historic or archaeological properties listed or eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures to prevent or minimize adverse impacts through appropriate mitigation and treatment measures.

(Natural Resources Commission; 312 IAC 25-4-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 13. 312 IAC 25-5-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-5-7 Period of liability

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 7. (a) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in 312 IAC 25-6-59 through 312 IAC 25-6-61, 312 IAC 25-6-120, and 312 IAC 25-6-122, except, with the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 8 and 9 of this rule. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) The period of liability shall:

- (1) commence after the last year of augmented seeding, fertilizing, irrigation, or other work; ~~and shall~~
- (2) continue for not less than five (5) years; ~~The period of liability shall and~~
- (3) begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release, except as provided in 312 IAC 25-6-59.

On lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, the liability period is two (2) years. To the extent that success standards are established by 312 IAC 25-6-59(c)(1) or 312 IAC 25-6-120(c)(1), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the department. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that ~~such~~ **the portion is:**

- (1) ~~is~~ not significant in extent in relation to the entire area under the bond; and
- (2) ~~is~~ limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) If the department approves a long-term intensive agricultural postmining land use, in accordance with 312 IAC 25-6-64 or 312 IAC 25-6-128, the applicable five (5) year or ten (10) year period of liability shall commence at the date of initial planting.

(e) The bond liability of the permittee shall include only those actions that the operator is obliged to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 312 IAC 25-6-64 or 312 IAC 25-6-128.

(f) Implementation of an alternative postmining land use approved under 312 IAC 25-6-64(c) and 312 IAC 25-6-128(c), which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in section 16(d)(2) of this rule.

(Natural Resources Commission; 312 IAC 25-5-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3503, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff Jan 1, 2005; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 14. 312 IAC 25-5-16 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-5-16 Performance bond release; requirements

Authority: IC 14-10-2-4; IC 4-34-2-1; IC 14-34-6-11
Affected: IC 4-21.5-3; IC 14-34-10-2; 30 CFR 800.40

Sec. 16. (a) A permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within thirty (30) days after an application for bond or deposit release is filed with the department, the operator shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement must be part of any bond release application and shall include the following:

- (1) The precise location of the land affected.
- (2) The number of acres.
- (3) The permittee's name.
- (4) The permit number and the date approved.
- (5) The amount of the bond filed and the portion sought to be released.
- (6) The type and appropriate dates of reclamation work performed.
- (7) A description of the results achieved relative to the operator's approved reclamation plan.

The advertisement shall also state that any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, Indiana, or local governmental agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operations, may file written comments or objections or may request a public hearing concerning the proposed release from bond with the department within thirty (30) days after the last publication of notice. The notice shall contain the address of the division for submission of comment and the calendar date for the close of the comment period. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, providing notification of the request to seek release from the bond.

(b) The director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section.

(c) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

(d) Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things, the following:

- (1) The degree of difficulty to complete any remaining reclamation.
- (2) Whether pollution of surface and subsurface water is occurring.
- (3) The probability pollution will continue.
- (4) The estimated cost of abating the pollution.

The surface owner, agent, or lessee shall be given notice of the inspection by the director and may participate with the department in the inspection. The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the request if no public hearing or informal conference is held under subsection (i) or (j) or if an informal conference is held under subsection (i) or public hearing is held under subsection (j) within thirty (30) days after the informal conference or public hearing is completed.

(e) The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

(1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.

(2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to the stream flow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.

(3) Phase III. The department may release the remaining bond only after the:

(A) operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this article, or the permit; and

(B) expiration of the period specified for operator responsibility in IC 14-34-10-2.

(f) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing:

(1) stating the reasons for disapproval; and

(2) recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(g) If an application is ~~made~~ **submitted** for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

~~(h) A determination by the director under the provisions of this article or IC 14-34 is subject to review. An affected person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding.~~

(h) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release and request a public hearing with the department within thirty (30) days after the last publication of the notice under subsection (a).

(i) Upon receipt of written objection ~~or~~ **and** a request for public hearing under subsection ~~(a)~~, **(h)**, the department, at the discretion of the director, may set a dispute under this section for an informal conference to resolve the objection. **The informal conference shall be conducted within thirty (30) days after the close of the period for filing written comments or objections, or requests for public hearing as specified in subsection (a). The department shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties in electronic or stenographic format. The department shall furnish all parties with written findings based upon the informal conference stating the reasons for the findings.** Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of any of the following:

- (1) A permittee.
- (2) A person who files objections.
- (3) The department.
- (4) Another interested person.

(j) If **written objections and request for public hearing** filed under subsection ~~(a)~~ **(h)** are not resolved through an informal conference, **or an informal conference is not conducted**, the department shall hold a public hearing within a reasonable time following the receipt of the request. The public hearing shall be conducted as follows:

(1) The date, time, and location of the public hearing shall be sent to the permittee and other **interested** parties to the hearing and advertised by the department in a newspaper of general circulation in the county where the surface coal mining and reclamation operation proposed for bond release is located one (1) time each week for two (2) consecutive weeks.

(2) The requirements of IC 4-21.5-3 shall not apply to the conduct of the public hearing. The public hearing shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the public hearing. An electronic or stenographic record shall be made unless waived by all parties. The record shall be maintained and shall be accessible to the parties of the public hearing until final release of the applicant's performance bond or other equivalent guarantee under this article. **The public hearing shall be conducted in the locality of the surface coal mining operation proposed for bond release, or, at the option of the person filing the hearing request, in Indianapolis, Indiana or Jasonville, Indiana.**

(3) The department shall furnish all parties of the public hearing with the following:

- (A) The written findings of the director based on the public hearing.
- (B) The reasons for the ~~finding~~ **findings**.

(4) The public hearing shall be conducted within thirty (30) days after:

- (A) receipt of the request for the hearing; or
- (B) the date of an informal conference under subsection (i).

(4) (5) If all parties requesting the public hearing withdraw their request before the conference is held, the public hearing may be canceled.

(k) For the purpose of the public hearing conducted under subsection (j), the department shall have the authority to:

- (1) administer oaths;
- (2) subpoena witnesses or written or printed materials;
- (3) compel the attendance of witnesses or production of the materials; and
- (4) take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant and operator in the general vicinity.

A verbatim record, electronic or stenographic, of each public hearing shall be made and a transcript made available on the motion of any party or by order of the department.

(l) A determination by the director under the provisions of this article or IC 14-34 is subject to administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding. The request for administrative review must be in writing and received by the commission within fifteen (15) days of receipt of the determination by the director.

(Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff Oct 31, 2007, except subsections (d), (e), (f), (g), (h), (i), and (j), see 20071031-IR-312060068ONA; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 15. 312 IAC 25-6-59 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-59 Surface mining; revegetation; standards for success for nonprime farmland

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 59. (a) Success of revegetation is judged on the following:

- (1) The effectiveness of the vegetation for the approved postmining land use.
- (2) The extent of cover compared to the cover occurring in natural vegetation in the area.
- (3) The general requirements of section 54 of this rule.

(b) Ground cover, production, and stocking are satisfactory if they are not less than ninety percent (90%) of the success standard as determined by the sampling techniques under section 60 of this rule and the statistical methodology under section 61 of this rule.

(c) Standards for success are applied under the approved postmining land use and must include the following conditions:

(1) For a previously mined area that was not reclaimed under sections 1 through 58 of this rule, this section, and sections 60 through 148 of this rule, the ground cover of living plants shall be as follows:

(A) Not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(B) Not less than the cover existing before redisturbance.

(C) Adequate to control erosion.

(2) For an area to be developed for an industrial/commercial or a residential use less than two (2) years after regrading is completed, the ground cover of living plants shall be not less than what is required to control erosion.

(3) For pastureland, the ground cover success standard shall be one hundred percent (100%). In addition, the production of living plants on the revegetated area shall be equal to one (1) of the following:

(A) An approved reference area.

(B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

(C) A target yield determined by the following formula:

$$\text{Target Yield} = \text{NRCS Target Yield} \times (\text{CCA}/10 \text{ Year CA})$$

Where: NRCS = The average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used and shall be contained in the appropriate sections of the permit application.

CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

10 Year = The 10 year Indiana Agricultural Statistics Service county average, CA consisting of the year being evaluated and the 9 preceding years.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(4) For an area to be developed as a shelter belt, ~~or for~~ a fish and wildlife habitat, recreation, or forestry land use, the success of vegetation is determined on the basis of tree, shrub, or half-shrub stocking and ground cover. The area seeded to a ground cover is not acceptable unless the director determines the ground cover is adequate to control erosion. Stocking rates are those in the approved permit reclamation plan and are not less than the following:

(A) **For a forestry use**, four hundred fifty (450) plantings per acre ~~for a forestry use. or such stocking rate and species approved in the reclamation plan for a specific forest reclamation approach.~~

(B) A rate appropriate to support a shelter belt or a land use (other than forestry) described in this subsection. The rate established under this clause may be adjusted for

particular areas within a shelter belt or land use in order to support a diverse wildlife habitat if the adjusted rate is approved in the plan of reclamation and will not result in erosion.

(5) For an area to be used as cropland, crop production on the revegetated area must be at least equal to one (1) of the following:

(A) An approved reference area.

(B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

(C) A target yield determined by the following formula:

$$\text{Target Yield} = \text{CCA} \times (\text{NRCSP}/\text{NRCSC})$$

Where: CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

NRCSP = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that existed on the permit area at the time the permit was issued.

NRCSC = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that is shown to exist in the county on the most current county soil survey.

A croppable soil is any soil that the Natural Resources Conservation Service has defined as being in capability Class I, II, III, or IV.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(6) A crop grown to demonstrate satisfaction of the requirements of subdivision (5) must be one (1) or more of the crops listed in 312 IAC 25-1-33 and as specified in the reclamation plan. An adjustment to predicted crop yields may be made according to accepted agronomic practices, after consultation with the Natural Resources Conservation Service or other sources approved by the director for factors, including:

(A) disease;

(B) weather;

(C) tillage management;

(D) pests; and

(E) seed or plant selection.

(7) The aggregate of the barren areas within an area under evaluation must not exceed five percent (5%) of the area. Revegetation is not successful unless each barren area within an area under evaluation is as follows:

(A) Smaller than seven hundred fifty (750) square feet.

(B) Completely surrounded by desirable vegetation.

(C) In compliance with sections 11 and 50 of this rule.

(d) A single reference area may be used for more than one (1) permit area if the requirements of this subsection are met with respect to each permit area. A reference area used to establish success standards under this section must meet the following requirements:

(1) If the area to be represented contains more than fifty (50) acres, the reference area shall contain at least five (5) acres unless the director approves a smaller area. If the area to be represented contains less than fifty (50) acres, the reference area shall be the greater of:

(A) ten percent (10%) of the area to be represented; or

(B) one (1) acre.

(2) Each reference area shall be representative of the:

(A) geology;

(B) soils;

(C) slopes; and

(D) vegetation;

of the area to be represented.

(3) Management of the reference area shall be identical to the area to be represented.

(4) Each reference area must be located within twenty (20) miles of the area to be represented.

(5) Right-of-entry on the reference area for the authorized representatives of the director must be secured by written agreement or consent for the entire period in which the reference area will be used.

(e) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

(1) the selective husbandry practices can be expected to continue as part of the postmining land use; or

(2) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(f) Selective husbandry practices that may be approved under subsection (e) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

(1) Disease, pest, and vermin control.

(2) Repair of rills and gullies.

(3) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(g) The success standards identified in subsection (c) shall be met during the growing seasons of any two (2) years of the responsibility period, except the first year, for cropland or pastureland. The success standards for any other land use are measured by the last year of the responsibility period.

(Natural Resources Commission; 312 IAC 25-6-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3537, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 16. 312 IAC 25-6-93 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-93 Underground mining; explosives; general requirements

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 93. (a) This section and sections 94 through 97 of this rule apply ~~only to surface~~ blasting activities incident to underground mining. ~~including initial rounds of~~ **This section and sections 94 through 97 do not apply when blasts are detonated, for slopes and shafts, and similar activities, at depths greater than fifty (50) vertical feet below the original ground surface.**

(b) Each permittee must comply with Indiana and federal laws that regulate the use of explosives.

(c) All blasting operations conducted after July 1, 1987, shall be conducted under the direct supervision of a certified blaster.

(d) A permittee must comply with the following blast design requirements:

(1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

(A) one thousand (1,000) feet of any building used as a dwelling (not owned by the permittee), public building, school, church, or community or institutional building; **or**

(B) five hundred (500) feet of an active or abandoned underground mine. ~~or~~

~~(C) one thousand (1,000) feet of a pipeline.~~

(2) The blast design may be presented as part of a permit application or at a time, prior to the blast, approved by the director.

(3) The blast design shall:

~~(A)~~ contain sketches of the typical drill patterns, delay periods, and decking; and ~~shall~~

(B) indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of the structures to be protected, as well as a discussion of design factors to be used, that protect the public and meet the applicable airblast, ground-vibration, and flyrock standards of section 96 of this rule.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The director may require changes to the design submitted if necessary to protect public safety or prevent damage to structures described in subdivision (1).

(e) The certified blaster and at least one (1) other person shall be present at the firing of a blast. The certified blaster shall either physically detonate the charge or give the order to detonate the charge.

(f) Each person responsible for blasting operations at a blast site shall be familiar with the approved blasting plan, and site-specific performance standards.

(g) Each person responsible for blasting operations shall possess a valid certification under 312 IAC 9. A certified blaster must make all decisions concerning the following:

- (1) Blast hole size, spacing, or depth.
- (2) The quantity of explosives in each hole.
- (3) The total quantity of explosives to be detonated.
- (4) The delay periods to be used.

(Natural Resources Commission; 312 IAC 25-6-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 17. 312 IAC 25-6-94 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-94 Underground mining; explosives; preblasting survey

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 94. (a) At least thirty (30) days before the initiation of blasting, the permittee shall notify in writing all residents ~~operators of pipeline,~~ or owners of dwellings or other structures located within one-half (1/2) mile of the permit area how to request a preblasting survey.

(b) The applicant or permittee shall ~~cause~~ **notify** the **public by** publication, at least once a week for four (4) consecutive weeks in a local newspaper of general circulation in the county in which the blasting will occur, ~~of a notification that the applicant or permittee they~~ will conduct a preblasting survey upon the request by a resident or owner of a manmade dwelling or structure within one (1) mile of any portion of the permit area. A copy of the public notice and publisher's affidavit or other proof of publication shall be filed with the director not later than four (4) weeks after the last date of publication.

(c) On the written request to the director or the permittee by a resident or owner of a dwelling or structure that is located within one (1) mile of any ~~surface blasting activity~~ **portion of the permit area** covered by section 93 of this rule, this section, and sections 96 through 97 of this rule, the permittee shall promptly:

- (1) conduct a survey of the dwelling or structure; and ~~promptly~~
- (2) submit a report of the survey to the director and to the person requesting the survey.

If a structure is renovated or added to subsequent to a survey, upon request by the resident or owner, a survey of the additions or renovations shall be performed by the permittee under this section.

(d) The survey shall:

- (1) determine the condition of the dwelling or structure; and ~~shall~~
- (2) document any preblasting damage and other physical factors that could reasonably be affected by the blasting.

Assessments of cisterns, wells, other water systems, pipelines, cables, transmission lines, and similar structures warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(e) A written report of the survey shall be prepared and signed by the person who conducts the survey. Copies of the report shall be promptly provided to the person requesting the survey and to the director. If a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program to encourage all dwelling owners to have preblasting surveys, where no request for a preblasting survey has been made of the director or the permittee, the survey need not be submitted to the director. If the person requesting the survey disagrees with the results of the survey, that person may notify in writing both the permittee and the director of the specific areas of disagreement.

(f) All survey requests received by the permittee more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting. A request received less than ten (10) days before the initiation of blasting shall be completed promptly but need not be completed prior to initiation of blasting.
(*Natural Resources Commission; 312 IAC 25-6-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA*)

SECTION 18. 312 IAC 25-6-95 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-95 Underground mining; explosives; publication of blasting schedule

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 95. (a) Blasting schedule publication and distribution requirements are as follows:
(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days, before beginning a surface blasting program in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed to local governments and public utilities and by mail to each residence within one-half (1/2) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule pursuant to **under** subdivisions (1) and (2) at least every twelve (12) months.

(b) ~~Blasting schedule contents.~~ The blasting schedule shall contain, at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place.

(2) Days and time periods when explosives are to be detonated.

(3) Methods to be used to control access to the blasting area.

(4) Types and patterns of audible warnings and all-clear signals to be used before and after blasting.

(5) **The** name, address, and telephone number of the permittee.

(c) Before surface blasting in areas or at times not in a previous blasting schedule, the permittee shall:

(1) prepare a revised blasting schedule; and ~~shall~~

(2) publish and distribute the revised schedule according to the procedures in subsections (a) and (b).

~~The revised blasting schedule shall be approved by the director before publication and distribution.~~

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication.

(Natural Resources Commission; 312 IAC 25-6-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 19. 312 IAC 25-7-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-7-5 State enforcement; cessation orders

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-3-1; IC 14-34-10-2; IC 14-34-15-6

Sec. 5. (a) An authorized representative of the director, when conducting an inspection, shall immediately order a cessation of the portion of the surface coal mining and reclamation operation relevant to the condition, practice, or violation if he **or she** finds any condition or practice, or any violation of IC 14-34-10-2, or any condition of a permit required by IC 14-34-3-1, or any condition of an exploration approval which condition, practice, or violation:

- (1) creates an imminent danger to the health or safety of the public; or
- (2) is causing, or can reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.

(b) An authorized representative of the director shall immediately issue a cessation order to any person who does not hold a valid permit to conduct those operations.

(c) Where the director or the director's authorized representative finds that the ordered cessation of surface coal mining operation, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources in the most expeditious manner physically possible, the director shall, in addition to the cessation order, impose affirmative obligations on the permittee requiring him **or her** to take whatever steps the director deems necessary to abate the imminent danger or the significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(d) When, on the basis of an inspection, an authorized representative of the director, for good cause shown and upon written findings, finds that a notice of violation has been issued under section 6(a) of this rule and the person to whom it was issued fails to abate

the violation within the abatement period fixed or subsequently extended by the authorized representative, he or she shall immediately order a cessation of coal exploration or that portion of the surface mining and reclamation operations relevant to the violation.

(e) A cessation order issued under this section shall require the person to whom it is issued to take the steps necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(f) A cessation order issued under this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) the nature of the condition, practice, or violation;
- (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and
- (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(g) An authorized representative of the director may modify, terminate, or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(h) An authorized representative of the director shall terminate a cessation order by written notice to the person to whom the order was issued:

- (1) for a cessation order under subsection (a) or (b), when the authorized representative of the director determines that the condition or practice resulting in the issuance of the cessation order has been abated; or
- (2) for a cessation order under subsection (d), when steps necessary to abate the violations covered by the order have been completed.

(i) Termination of a cessation order shall not prohibit the director from assessing civil penalties for those violations under sections 13 through 21 of this rule.

(j) The order shall remain in effect until the condition or practice resulting in the issuance of the cessation order has been abated or until vacated, modified, or terminated in writing by an authorized representative of the director or until the order expires under IC 14-34-15-6(d).

(k) Within thirty (30) days after a cessation order is issued under this section or under 30 CFR 843.11 (except where **an administrative law judge or a court of competent jurisdiction grants** a stay of the cessation order **is and the stay remains** in effect), the permittee shall provide the director with written documentation to establish one (1) of the following:

(1) There has been no change since the immediately proceeding submittal of information under 312 IAC 25-4-17.

(2) The information required from a permit application by 312 IAC 25-4-17, if not previously submitted.

(3) The information needed to correct or update (to the date of the cessation order) information previously submitted and corrections or updates as needed.

(l) The director, within sixty (60) days after issuing a cessation order, shall notify, in writing, any person who has been identified under subsection (k) and 312 IAC 25-4-17 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

(m) Any determinations made under this section shall:

(1) be in writing; and

(2) contain a right of appeal under IC 4-21.5.

(Natural Resources Commission; 312 IAC 25-7-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3592, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)

SECTION 20. THE FOLLOWING ARE REPEALED: 312 IAC 25-4-23; 312 IAC 25-4-64.